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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/529,550 | 03/29/2005 | Yuji Kuwabara | 2005_0454A | 7902 |
| 513 7590 12/16/2009 WENDEROTH, LIND & PONACK, L.L.P. 1030 15th Street, N.W., Suite 400 East Washington, DC 20005-1503 | | | | |
| EXAMINER | | | | |
| PADEEN, CAROLYN A | | | | |
| ART UNIT | | PAPER NUMBER | | |
| 1794 | | | | |
| MAIL DATE | | DELIVERY MODE | | |
| 12/16/2009 | | PAPER | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/529,550

Applicant(s)

KUWABARA ET AL.

Examiner

Carolyn A. Paden

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 November 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 16, 23-30 and 32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 16, 23-30 and 32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-06)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 2, 2009 has been entered.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 16, 23-30 & 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Deffense and Tirtiaux taken together.

Deffense discloses multiple fractionations of oils. In Figure 1 the fractionation of palm oil is shown. Here palm oil is fractionated into hard stearin and olein. Then olein is fractionated into soft palm mid fraction and super olein, in a second stage fractionation. Then the palm oil is further fractionated into a third stage. On page 36, palm mid-fraction is said to be considerably enriched with SUS, which corresponds to applicants G2U.

The claims appear to differ from Deffense in the recitation of how dry fractionation is performed. Tirtiaux specifically describes the fractionation process as "cooling melted fat" to create hard crystals for separation. The claims appear to differ from the references in the recitation of a heating step. Although heating is not mentioned, one of ordinary skill in the art would understand that a melting fat must have undergone a heating step. It would have been obvious to one of ordinary skill in the art to heat the palm oil or palm fraction of the references to melt the oil fraction for crystallization. It is appreciated that the specific ratio of solid to liquid fractions of claims 23-26 are not mentioned but would of ordinary skill in the art would be expected to optimize this ratio according to the yield of fraction desired. It is appreciated that the fats in the reference are not hydrogenated or isomerized but one of ordinary skill in the art would appreciate that the claims are directed to a process. The fact that a fat is chemically altered in some way is not seen to materially impact a process that separates a fat according to its melting point.

Applicant argues that the claims were amended to exclude vegetable butter. This has been considered but does not overcome the rejection. Palm oil is not seen to be a vegetable butter. The claims permit a variety of

starting materials, including fractionated crystalline fraction. Deffense discloses multiple fractionations of oils. Assuming arguendo that the claims were amended to delete the fractionated fraction, it is not seen that this amendment would overcome the rejection because the claims are directed to a process and not to a product. To fractionate an interesterified fat or a hydrogenated fat would not be expected to be patentably different from the fractionation of palm oil, as disclosed by Defense. Applicant argues that fractionation of processed fats is seldom used. This argument has been considered but is not persuasive. The fact that one does not usually use the process on alternative fats is not a good indication of patentable subject matter. The fact that solvents are usually used in fat fractionation does not suggest that dry fractionation is a new an unobvious process for fat fractionation, particularly in view of the applied references.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached by dialing 571-272-

1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Carolyn Paden/

Primary Examiner 1794